The Solicitors' Journal

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Current Topics.

The Solicitors' Journal.

WE regret the delay in publication of this week's issue, the small size of the number, and the omission of some of our regular features. We feel sure that readers will appreciate that this is through circumstances beyond our control and assure them that every effort will be made to return to normal as soon as possible.

Lord Blackburn.

THE late LORD BLACKBURN, who died on 21st March, about one month short of his eightieth year, had a reputation as a lawyer which extended south of the border, and a career which was in every way worthy of his great namesake, whose nephew he was. His education was divided between Clifton College, Trinity College, Cambridge, and Edinburgh University. Admitted to the Faculty of Advocates in 1887, he specialised in conveyancing, work which as solicitors well know demands of counsel at least as stern an intellectual effort as any legal work there is. He took silk in 1901. From 1903 to 1905 he was an advocate depute, and in 1916 he became senior advocate depute. In 1918 he was chosen to succeed LORD JOHNSON as a Senator of the College of Justice. In 1928 he was made Chairman of the Scottish Ecclesiastical Commissioners, and from 1922 to 1935 he was Chairman of the Railway and Canal Commission (Scotland). The late LORD BLACKBURN'S was a grand record, and both Scotland and England has lost a grand old man.

The Probation System.

THE HOME SECRETARY, speaking at the opening of a probation hostel at Osborn House, Burngrave Road, Sheffield, on 3rd March, said that about twenty years ago the courts began to take probation officers seriously, but real progress had only been made in the last ten years. Oddly enough, the four years of the war had seen the greatest strides of all made in the service. In 1936, there were 385 full-time probation officers in England and Wales; in 1939 this number had increased to 514, but on the 31st January of the present year there were no less than 638 full-time officers without counting 24 temporary full-time officers. This step forward had been brought about by the combined efforts of the Home Office, the justices and the local authorities. Probation was a variable factor; its success depended on what the justices and the probation officers, and indeed the probationer himself, made of it. Unless it had something constructive in it, it was not likely to have any effect on the offender, and the consideration given to him by the court might be completely wasted. There were three factors making for success or failure in probation work. In the first place the court must use sound judgment in choosing which cases were to be put on probation, or many a time the task of the probation officer would be hopeless from the first. The court must know a good deal about the offender's background and the circumstances of the offence, and it was a wise course in the adult court as well as the juvenile court to remand cases so that a probation officer could visit the offender's home. Goodwill and a social conscience were not sufficient qualifications for the probation officer, for he must, in addition, be something of an expert in the ills of the human mind and the social diseases that spring from dismal circumstances. He must study his probationers like a doctor—treating them all as individual patients. This was the reason why, some years ago, the Home Office started a special training scheme for probation officers so that they could enter the service with every possible advantage. The effect of this training in the long run would be not only to help the probation officers themselves, but to increase the value of their work. In the third place, a probation officer needed the help and sympathy of an active probation committee. The Home Secretary also referred to the value of hostels in providing a substitute for the good home conditions which were lacking in many cases. He said that the Home Office was giving very serious thought to ways and means of improving the administration of justice and the treatment of offenders. We all hoped and planned for improvements after the war, but we must also do everything we could now in spite of the war-time difficulties. While we waited for new laws, young people might be growing into hardened criminals. The Home Secretary's words will give encouragement and impetus to those who are striving to carry out improvements in criminal law administration. Those with experience of the criminal courts will agree that reclamation and rehabilitation provide the most important work arising out of the administration of the criminal law, and the Government's present concern with this vital subject will give general satisfaction.

Juvenile Delinquency.

To those who take any part in the work of rehabilitation of youthful offenders, whether in court or out of court, the statement of Mr. HERBERT MORRISON in the House of Commons on 23rd March is news of the first importance. The Home Secretary expressed the view that the problem must be considered as a whole. Every persistent offender had been at one time a first offender, and questions affecting the child or the adolescent offender were closely linked with questions affecting the oldest offenders. To assist him in dealing with this subject as a whole, he had come to the conclusion that what was wanted was not another committee of inquiry, but a standing committee to advise and assist the Home Office in developing a comprehensive policy of reforms and to maintain constant touch with the implementation of that policy. There had been a number of committees of inquiry. Much information had been collected and a large measure of agreement had been reached, but while much material was already available on which to base a policy of progress, there was much work still to be done in shaping that policy and translating it into action. In carrying out this work it was desirable that the official knowledge and experience of the Home Office should be pooled with the knowledge and ideas of men and women whose experience had lain in various fields, including not only those who had been associated with the work of the courts and with the treatment of offenders, but others who might approach this problem with fresh ideas and broad sympathies gained in other spheres of work. He proposed to invite a number of suitable persons to serve on an advisory council constituted for the purpose of assisting to draw up a programme of reforms in methods of dealing with offenders, and to advise with regard to the various measures required to implement this programme. When this council had been constituted he would ask them to give special and early attention to the problems connected with juvenile delinquency. The Home Secretary's announcement contains the promise of great steps forward in penal treatment, and we may look forward to improvements which will bring our criminal administration more closely into line with public conscience.

Legal Education.

THAT the ferment of new ideas on the subject of legal education is by no means confined to this country is emphasised in an article by Captain R. H. GRAVESON, Ph.D., LL.M., in "The Journal of Comparative Legislation and International Law," for November, 1943. The author refers to the issue of the "Columbia Law Review" for May, 1943, the whole of which was devoted to a survey of legal education in the United States of America. Lecturing, as we know it, writes the author, was superseded in American law teaching at the end of the last century by the case system which, in its turn, he says, many now consider obsolescent. He admits, however, complacency in certain English Universities and intense conservatism in the profession,

and asks us to learn from the experience and experiments of America. The lawyer of to-day, he writes, must have an extra-legal background, which it is the function of his pre-legal training to provide, a comparative general legal training which must be provided by his legal education, and a certain amount of specialised knowledge, which must be provided by his practice. On the subject of the teaching of law, he writes that there is at least a *prima facie* case for study by law teachers of how students learn, and how best they can be taught, as "law teachers, though the best of lawyers, may be the worst of teachers." He also suggests that the frequency of progress tests must be increased, and that there should be continuous personal contact between teacher and student. Another general statement, the importance and truth of which all law teachers and ex-students will endorse, is that the superior efficacy of learning by understanding over learning by memorising has been practically demonstrated. "In this of all things," says the writer, "the teacher alone can help." In America a combination of teaching methods adds a variety which enhances interest in the subject taught. The unmanageable mass of case law has robbed the single decision of its individual value as a precedent, and has given authority to a line of decisions instead. The case system of teaching began at the end of the nineteenth century when the authority of single precedents stood higher. The writer states that he has derived two major impressions from a year's instruction by this method: first, that the case system, unless complemented by lectures, gives an atomistic view of law; secondly, lawyers produced by this method are more capable and confident, but have a more limited knowledge. In view of the fact that understanding is more important than memorising, the writer thinks that this may not be a bad thing, and he suggests that as an experiment the case system combined with lectures is well worth trying in the English law schools. The "problem method" of posing hypothetical legal problems is, according to the writer, strongly advocated by Professor CAVERS, of Duke University, in the U.S.A., and, in fact, has been successfully applied in the University of London second and third year tutorial classes. The writer's conclusion should serve as a warning to those who seek to adopt innovations from abroad without considering the question of the soil to which those innovations are native. The American strivings after a more realistic form of teaching law, he says, are in no small measure due to the fact that the practical training of lawyers in many American States does not include articles of clerkship or reading in chambers. Nor do American teachers normally practise law, as many do here. Nevertheless, although these methods of teaching are imported from abroad, they may, like the potato and the soya bean, also imported from abroad, take an important place in our future diet.

Legal Education in Australia.

THE views of MR. E. L. PIESSE on legal education, expressed in his presidential address at an annual meeting to the Law Institute of Victoria on 29th November, 1943, will interest all who think that a correct method of education for solicitors is a matter of importance. Apparently some changes have been made in the law course of the University of Melbourne and in the subjects prescribed in the Rules of the Council of Legal Education. These fell far short of what the Council of the Law Institute had hoped for. The course of study and training, although improved in 1940, was still in his opinion defective in that it gave too much time to subjects such as Roman Law, and treated of others in excessive detail, and it gave too little time to the preparation of students for their actual work as practitioners. The Council of the Institute continued to be concerned at the shortcomings of the course; and during the past year, in the hope that it might be able to assist in removing some that have become especially serious, it had resolved to establish courses of practical instruction in solicitors' book-keeping and trust accounts, and in the law of taxation with particular relation to advice to clients before entering into transactions and the drafting of documents as they are affected by taxation. MR. PIESSE recalled that The Law Society of London had lately decided on changes in its School of Law, with a view to objects similar to those of the Institute. Hitherto the teaching at the school had been given almost entirely by barristers employed on a part-time basis. This had resulted in undue emphasis being laid on the academic, as distinct from the practical, side of a solicitor's legal training. Teaching at the school, he remarked, would for the future be undertaken mainly by solicitors with practical experience.

Effect on Local Government of National Health Plan.

ON the day preceding the debates on the new national health plan in Parliament *The Times* published an article from a special correspondent dealing with the place of local authorities in the new health scheme, a matter to which LORD NATHAN made some anxious reference in the Lords debate. It stated that local authorities will not be able to discharge their new duties effectively unless there is a drastic simplification of the present machinery of health administration. In Scotland all important public health services are administered by the thirty-one counties and the four large burghs. In England and Wales, in the words of the White Paper, there is a far more "complicated patchwork pattern of health resources." Not only the sixty-one counties and eighty-three county boroughs (outside London) but many minor authorities are involved. There are 188 authorities under the Midwives Acts and 407 under the Maternity and Child Welfare Acts; and no fewer than 1,500 authorities may provide fever hospitals. The need for a complete overhaul of all local government machinery is now generally admitted. The vesting of responsibility for all personal health services in county and county borough councils, acting singly for some purposes and jointly for others, is admittedly a temporary solution, but a solution which can be convincingly defended as the most practical for the time being. The article states that a modern general hospital requires a population of 50,000 to 100,000 for efficient working, and a largely self-contained and diversified system of hospital and specialist services is scarcely possible for an area with less than half a million people. There are, however, thirty-three counties with less than 500,000 population (including thirteen with less than 100,000), while thirty-nine county boroughs have fewer than 100,000 people. The need for combined hospital planning is self-evident. The article concludes on a hopeful note as to the wide possibilities of the development of great health authorities supported by the best expert local guidance available to any local authorities.

Accounts of Holding Companies.

SUGGESTIONS as to what is the best practice as to disclosure in holding companies' accounts pending whatever may be enacted following the recommendations of the Cohen Committee, are contained in a memorandum recently issued by the Institute of Chartered Accountants. It is recommended that: (1) With the published accounts, statements should be submitted in the form of a consolidated balance-sheet and consolidated profit and loss account or in such other form as will enable the shareholders to obtain a clear view of the financial position and earnings of the group as a whole. (2) Every consolidated statement should indicate: (*a*) The nature and measure of control adopted as a basis for the inclusion of subsidiary undertakings; (*b*) The reasons for the non-inclusion of any subsidiary undertakings which would normally be included on the basis adopted for the group; (*c*) The procedure adopted in cases where the accounts of subsidiary undertakings are not made up to the same date as the accounts of the holding company; (*d*) In the case of subsidiary companies operating overseas, if relatively important, the basis taken for the conversion of foreign currencies as affecting assets, liabilities, and earnings. (3) The consolidated balance-sheet should exclude inter-company items and should show the combined resources of the group and its liabilities and assets, aggregated under suitable headings. It should distinguish between capital reserves not normally regarded as available for distribution and revenue reserves, including those which would be available for distribution as dividend by the holding company if brought into its accounts. It should also show the interests of outside shareholders in the capital and reserves of the subsidiary undertakings and, under a separate heading, the interests of the group in subsidiary undertakings which have not been consolidated. (4) The consolidated profit and loss account, or other information given as to the earnings of the group should disclose the aggregate results of the group for the period covered by the accounts, after eliminating the effect of inter-company transactions. It should be in such a form that these aggregate results may readily be reconciled with those shown by the profit and loss account of the holding company, in which should be stated separately the aggregate amount included in respect of subsidiary undertakings whose accounts have not been consolidated. The following, *inter alia*, should be separately stated: (*a*) The aggregate results of any subsidiary undertakings the balance-sheets of which have not been included in the consolidation; (*b*) The portion of the aggregate net results attributable to outside shareholders' interests in the subsidiary undertakings; (*c*) The portion of the consolidated net results attributable to the holding company's interest which remains in the accounts of consolidated subsidiary undertakings or the amount by which the dividends from such subsidiary undertakings exceed the holding company's share of their earnings for the period. (5) Profits earned and losses incurred by subsidiary undertakings prior to the acquisition by the holding company of the shares to which they are attributable should be viewed as being of a capital nature from the standpoint of the holding company. Such pre-acquisition profits (whether received in dividend or not) should therefore not be brought into account as being available for distribution in dividend by the holding company. Many companies already issue a consolidated balance-sheet and profit and loss account. One of the main points which the memorandum emphasises is the need for the greatest practicable amount of detail in the profit and loss account in such cases. There is plenty of evidence, now that professional advisers generally regard with dissatisfaction the present state of the law with regard to disclosure in the accounts of public companies, and more particularly in the accounts of holding companies. The opinion and detailed recommendations of the Institute of Chartered Accountants adds considerable weight to the general opinion.

Is a Manufacturer or Vendor an Insurer of the Consumer?

SINCE *Donoghue* v. *Stevenson* [1932] A.C. 562, the leading case known to students as "the case of the snail in the gingerbeer," the question of whether a manufacturer warrants his goods to be innocuous to the consumer has constantly arisen. The extent of the duty which is owed both by the manufacturer and the vendor is of such a complex nature as to warrant some examination of the subject.

The sale of certain dangerous goods, such as firearms, explosives, poisons, petrol, etc., is regulated by statute. Apart from any such regulation, whenever a person sells goods he warrants them fit for the purpose for which they are sold (Sale of Goods Act, 1893, s. 14). If the article proves unfit for the required purpose, an action for breach of contract will lie by the purchaser. If the article proves to be dangerous, different considerations arise. There is no rule of thumb by which articles can be divided into dangerous or innocuous. It is always a question of law whether any article is dangerous in law or not. In *Lake* v. *Elliott, Ltd.* (1912), 106 L.T.D.C., where this rule was first laid down, it was held that a vendor of a chattel which is held to be dangerous *per se* is under a duty to warn the purchaser of the possibility of danger. Once this warning has been given, the vendor owes no further duty to the purchaser. There may, however, be cases where a warning is not a sufficient discharge of the vendor's duty. An example of such an exception is a warning given to a child of tender years who is unable to understand the warning.

Thus, in *Burfitt* v. *Kille* (1939), 2 All E.R., Atkinson, J., at p. 375, makes it quite clear that the duty of the vendor is not discharged by a warning which is not fully appreciated by the recipient. In this case a pistol was sold to a child without a warning. The pistol in itself was a dangerous article. The sale without warning was held to be a breach of the vendor's duty.

Articles that are not *per se* dangerous may cause danger because of some defect in their manufacture of which the vendor knows or ought to have known, and of which the purchaser is unaware. The vendor is under a duty to warn the purchaser and will be liable in tort if he sells without such warning. Again, a perfectly harmless article may be dangerous in the hands of a particular purchaser, such as a young child. The vendor cannot discharge his duty of protecting the young purchaser by warning him, and may well find the harmless article declared dangerous in law.

A case on this point was recently decided by Tucker, J., viz., *Ricketts* v. *Erith Borough Council and Another* (1943), 2 All E.R. 62. In this case the plaintiff was a little girl who lost her eye in the playground of her school when another child aged ten shot a bamboo arrow at her during the mid-day break. The boy had gone out of the school premises at the beginning of the break and purchased this toy from a nearby store for a penny. The injured girl brought the action against the borough council for their alleged lack of supervision and against the shopkeeper on the ground that he had been negligent in selling to an infant of apparent age articles which he knew or ought to have known were dangerous in such hands, and that he knew or ought to have known that the boy was a pupil at the adjacent school and that he allowed him to take the bow and arrow into the playground without warning him of the danger of playing with the articles in the presence of other children of tender years.

The learned judge found as a fact that the shopkeeper when he sold the bow and arrow did not apply his mind to the question of where the little boy came from or where he was going to play with the toy which he bought. He also found that the toy in question had been sold for a number of years without causing any harm to anyone. The learned judge held therefore that the bamboo bow and arrow was not dangerous, not even in the hands of an intelligent child aged ten. As a result the vendor was held not to have been negligent when selling this toy without warning or at all.

This finding is, of course, limited only to the toy in question. Any other article, however harmless in the hands of an adult, may ultimately be found to be "dangerous" in law.

Even in the case of an article found not to be dangerous either *per se* or in the hands of its purchaser, the manufacturer of an article taken internally or applied externally, who sells it owes a duty to the consumer to see that its use will not result in an injury to the customer's life or health. *Donoghue* v. *Stevenson*, *supra*, established this duty. Lord Macmillan, at p. 622, says: "the burden of proof must always be on the injured party to establish that the defect which caused the injury was present in the article when it left the hands of the party whom he sues, that the defect was occasioned by the carelessness of that party, and that the circumstances are such as to cast on the defender a duty to take care not to injure the pursuer. There is no presumption of negligence in such a case as the present, nor is there any justification for applying the maxim *res ipsa loquitur*. Negligence must be both evident and proved. The appellant accepts this burden of proof and, in my opinion, is entitled to have an opportunity of discharging it if she can. This is very far from saying that the manufacturer automatically accepts responsibility for any harmful defects that may be found in his article."

Again, in *Daniels* v. *White* (1938), 4 All E.R., Lewis, J., says, at p. 261: "I have to remember that the duty owed to the consumer, or to the ultimate purchaser, by the manufacturer is not to ensure that his goods are perfect. All he has to do is to take reasonable care to see that no injury is done to the consumer or ultimate purchaser. In other words, his duty is to take reasonable care to see that there exists no defect that is likely to cause such injury." In this case serious injury was caused to a purchaser of lemonade which contained a strong dose of carbolic acid. The purchaser could not show that the system of filling the bottles was faulty in any respect, and the action failed as the learned judge took the view that a manufacturer who used a fool-proof system of bottling lemonade had fully discharged his duty *vis-a-vis* his customer.

It must be further noted that a manufacturer or vendor is not liable if the customer could have discovered the defect and either did not trouble to inspect the article or knowing of the fault used it in its faulty condition. Thus, in *Farr* v. *Butters Bros.* [1932] 2 K.B. 606, the fault in a crane was discovered by the purchasers' foreman. The crane was used and collapsed. The purchaser failed to recover damages. Again, in *Otto* v. *Bolton* [1936] 2 K.B. 46, and *Evans* v. *Triplex Safety Glass Co.* (1936), 1 All E.R. 283, the plaintiff was unsuccessful because he did not trouble to examine the faulty article and thus failed to discover a patent defect.

It is clear, therefore, that no customer can purchase an article and feel that he has an automatic cause of action against either vendor or manufacturer. Only if the defect is hidden and unknown to the consumer who has inspected the article can there be a strong chance of success. *Daniels* v. *White*, *supra*, puts an onus on the purchaser which shows clearly that the manufacturer is far from being an insurer of the consumer.

The manufacturer who sells an article must take all reasonable care to ensure that it is (i) not dangerous, or, if dangerous, that the customer is fully aware of its inherent dangers; and (ii) that it is free of defects which cannot be discovered on reasonable examination, but which could have been avoided if a particular safe system of manufacture had been employed. Children are customers that must be considered with particular care by the vendor, for many articles that are in themselves innocuous may well be held to be dangerous in law when put into their hands.

It is clear that neither manufacturer nor vendor are insurers of their customers. They have a strong duty imposed upon them, but no more. The injured customer has to prove negligence before he can have any chance of success, for, as Lord Macmillan points out in *Donoghue* v. *Stevenson*, *supra*, the doctrine of *res ipsa loquitur* does not assist him.

Assents.

ASSENTS have become so important in our conveyancing that it may be useful to our readers to have the main provisions relating to them set out together.

1. Formerly an assent was merely the consent of the personal representative to the vesting of personal estate in the legatee.

2. By the Land Transfer Act, 1897, the real estate of the deceased vested in his personal representative(s) as if it were a chattel real (s. 1), except that it was not lawful "for some or one only of several joint personal representatives, without the authority of the court, to sell or transfer real estate" (s. 2 (2)).

3. The personal representative(s) might under that Act assent to any devise contained in the will, but could not assent to the vesting of land in any person entitled thereto as heir (s. 3).

4. Under that Act the assent could be implied "as the writing does not vest the property, but is merely evidence that the executor has no longer any claim upon the property, which really vests under the will of the testator," *per* Phillimore, J., in *Kemp* v. *I.R.C.* [1905] 1 K.B. 581; 49 SOL. J. 147, and see *G.H.R. Co., Ltd.* v. *I.R.C.* [1943] 1 K.B. 303, at p. 305.

5. An assent is now a form of conveyance (L.P.A., s. 205 (1) (ii)).

6. An assent to the vesting of a legal estate in realty must now be in writing signed by the personal representative, and must name the person in whose favour it is given, and can no longer as a rule be implied (A.E.A., s. 36 (4)).

7. It will be noted that para. 6 applies to the legal and not the equitable estate.

8. If the personal representative is himself the devisee, there is no question of passing the legal estate as he has got it, so that the assent can in that case be implied (*Re Hodge* [1940] Ch. 260; 84 SOL. J. 113).

9. But "no doubt under the Act if a vendor is selling as beneficial owner taking under a will, the purchaser is entitled to require a written assent, in order that he may be satisfied as to the title, and the Act gives him the right to demand it" (*ibid.*, *per* Farwell, J., at p. 264 of the Law Reports).

10. If the personal representative is not the equitable owner, the legal estate in the land remains in him or his successor until a written and signed assent has been given in favour of a named person, although the equitable estate may pass through several hands.

11. Unless a contrary intention appears, the assent relates back to the death of the deceased (A.E.A., s. 36 (2)).

12. The assent may be in favour of any person (s. 36 (1)).

13. " Person " *prima facie* includes a corporation (Interpretation Act, 1889, s. 19).

14. According to W. & C., p. 1467, a mortgage should not be transferred by an assent.

15. Notice of an assent should " be written or endorsed on or permanently annexed to the probate or letters of administration, at the cost of the estate of the deceased " (A.E.A., s. 36 (5)).

16. The assentee can require that the probate or letters of administration be produced, at the like cost, to prove that the notice has been placed thereon or annexed thereto " (*ibid.*)

17. The personal representative should state in the assent that he has not previously given or made an assent or conveyance in respect of the legal estate in the land in question (*ibid.* (6)).

18. In the case of an assentee who is absolutely entitled or who is a trustee for sale of unsettled land an ordinary assent is required. For a form, see L.P.A., Sched. V, Forms 8 and 9.

19. In the case of settled land there should be a vesting assent (S.L.A., ss. 6, 7, 8 and 117 (xxxi) and Form No. 5 in the Sched. I to that Act). It should contain :—

(*a*) a description of the property ;

(*b*) a statement that the land is vested in the assentee on the trusts for the time being affecting it ;

(*c*) the names of the S.L.A. trustees ;

(*d*) any additional or larger powers conferred by the trust instrument ;

(*e*) the name(s) of the person(s) entitled under the trust instrument to appoint new trustees.

20. As to incorporating statements by reference to an existing vesting instrument or to a settlement existing at commencement of the Act, see S.L.A., s. 5 (2).

21. An assent shall in favour of a purchaser, unless notice of a previous assent or conveyance affecting the legal estate has been placed on or annexed to the probate or administration, be taken as *sufficient* evidence that the assentee is entitled to have the legal estate conveyed to him and upon the proper trusts, if any (A.E.A., s. 36 (7)).

22. A purchaser is defined as meaning " a lessee, mortgagee or other person who in good faith acquires an interest in property for valuable consideration, also an intending purchaser, and ' valuable consideration ' includes marriage " (*ibid.*, s. 55 (xviii)).

23. " Sufficient " does not mean conclusive, and a purchaser cannot be forced to take a title which is apparently bad (*Re Duce and Boots Cash Chemists (Southern), Ltd.'s Contract* [1937] Ch. 642 ; 81 Sol. J. 651).

24. The moral of the last paragraph is that the assentee's title should not be explained in the assent.

25. A purchaser of a legal estate in settled land cannot call for production of the trust instrument, and must assume the correctness of the statements and particulars in the vesting assent (S.L.A., s. 110 (2)), provided that he must verify them where the *first* vesting instrument is executed for giving effect to (*a*) a settlement subsisting at the commencement of that Act, (*b*) an instrument by virtue of the Act deemed to be a settlement, (*c*) a settlement by virtue of the Act deemed to have been made after the commencement of the Act or an intended settlement of the legal estate not complying with the requirements of the Act.

26. It is suggested in W. & C., p. 1171, that *semble* this proviso does not apply to vesting assents, but as in the definition section " a vesting instrument " includes a vesting assent, this suggestion cannot be relied on unless and until there is a decision to that effect.

27. An assent or a vesting assent, if under hand only, requires no stamp (A.E.A., s. 36 (11)), but if under seal requires a 10s. deed stamp.

28. But if the assent is in reality a conveyance on sale it requires an *ad valorem* stamp (*G.H.R. Co., Ltd., supra*, a case where the executors of a vendor who had agreed to sell but had not conveyed the property purported to assent to the vesting of the property in the purchaser).

29. If the devisee sells, the conveyance could be off the title and bear the *ad valorem* stamp, and then there could be an assent in favour of the purchaser, which requires no stamp.

30. The assent should contain an acknowledgment of the right of the assentee to production of the probate or letters of administration, and possibly of other documents retained by the personal representatives. This requires no stamp (W. & C., p. 1472), unless it is under seal.

31. An assent to a person other than a purchaser does not prejudice the right of the true owner to follow the property or any property representing the same (A.E.A., s. 38).

32. *Semble*, the word " assent " is not necessary, provided that the words used amount to the vesting of the property in the assentee.

33. A personal representative before giving an assent in favour of a person may permit that person to take possession of the land without prejudicing the rights of the personal representative (*ibid.*, s. 43).

34. " An assent may be given subject to any legal estate or charge by way of legal mortgage " (*ibid.*, s. 36 (10)).

35. The deceased whom the personal representative represents may have died before 1926 (*ibid.*, (12)).

36. In the case of registered land an assent or vesting assent must be in the prescribed form (Land Registration Act, 1925, s. 41 (4), see Forms 56 and 57).

37. The personal representative can assent though he is not entered on the register (3 Key & Elphinstone's Precedents, 14th ed., p. 287).

38. An assent is not appropriate in the case of property falling into the deceased's estate and conveyed to the personal representative after the death of the deceased as part of that estate (Halsbury's Laws of England (Hailsham Edition), vol. 14, p. 363 (*f*)).

39. Administrators, when they have fully administered an estate, may assent to the vesting of the land in themselves as trustees for sale under A.E.A., s. 33 (*Re Yerburgh* [1928] W.N. 208).

40. " In cases where a vacancy arose before that moment arrived, it would be necessary for an application to be made to the Probate Court for the appointment of another personal representative " (*ibid.*, *per* Romer, J., as he then was).

41. The costs of a vesting assent have to be paid out of the trust estate (S.L.A., s. 8).

In " Halsbury's Laws," *supra*, p. 366, it is suggested that the costs of executing a simple assent should be paid out of the estate of the deceased, but this is not certain (*Re Grosvenor* [1916] 2 Ch. 375 ; 60 Sol. J. 681).

42. " An assent cannot be revoked " (W. & C., p. 1471).

43. As to an assent being employed instead of a conveyance, where the settled land is at the commencement of the S.L.A. vested in personal representatives or becomes vested in them before a principal vesting deed has been executed, see S.L.A., Sched. II, para. 2 (transitional provisions).

A Conveyancer's Diary.

Commorientes—I.

The current issue of the Law Reports includes the decision of the Court of Appeal in *Re Grosvenor* [1944] Ch. 138, to which brief references have already been made here. I have been asked by correspondents to discuss " commorientes " more fully in the light of *Re Grosvenor*, and it is now possible to do so. The whole subject has now got into such an unsatisfactory state that it will be as well to deal with it on a wide basis so as to try and get *Re Grosvenor* into perspective.

Section 184 of the Law of Property Act, 1925, enacts : " In all cases where, after the commencement of this Act, two or more persons have died in circumstances rendering it uncertain which of them survived the other or others, such deaths shall (subject to any order of the court) for all purposes affecting the title to property be presumed to have occurred in order of seniority, and accordingly the younger shall be deemed to have survived the older." This section was entirely new, and it deals with a separate and distinct matter, so that, as Goddard, L.J., said in *Re Grosvenor* (at p. 151), it is unnecessary in applying it to consider any other part of the Act. It was also agreed by all the learned judges and lords justices that whatever the words in brackets do mean, they do not mean that the court has a discretion to order that the section shall not apply strictly. There, however, the common ground ends.

It is, of course, inadmissible in construing s. 184 to inquire what the draftsmen of the Act were trying to do. But for our present purpose, it is both admissible and relevant. The intention can best be collected from the note to the section in " Wolstenholme," whose learned editor had the best reason for knowing. It is as follows : " This section is new and removes the difficulties shown by *Wing* v. *Angrave*, 8 H.L.C. 183 ; *Re Alston* [1892] P. 142 and *In the Goods of Beynon* [1901] P. 141." This note appears to be much too optimistic, as we shall see.

Wing v. *Angrave* is the leading case, and is worth some consideration. A husband and wife made wills of even date. The wife's will exercised a power of appointment conferred on her under the will of her father. She appointed absolutely to the husband, " and in case my said husband shall die in my lifetime " to one, Wing, absolutely. The husband and Wing were the executors. The husband devised his entire estate to Wing (who, with the wife, were appointed executors) on trust for the wife absolutely, " and in case my said wife shall die in my lifetime " on trust for the children of the marriage (of whom there were three) and if they should all die under twenty-one to Wing absolutely. The husband was older than the wife. They and their three children set forth a week later for Australia on board the emigrant ship *Dalhousie*, which was wrecked in the Channel shortly afterwards. There was one survivor of the wreck, who deposed that one of the children, Catherine, was lashed by him to a spar and, though she later died, there was no doubt that she survived the rest of the family, though she died under the age of twenty-one. The witness had seen the other four just before the end ; the wife had her arms round the two children and the husband had his arms round all three of them, and they were thus clasped together when they were

struck by a wave and carried into the sea. The witness never saw them again.

A considerable quantity of mutually destructive medical evidence was given as to "the process of drowning," which need not detain us. The question before the House of Lords was whether Wing took the fund appointed by the wife or whether it went to the persons entitled in default of appointment. Efforts were made to say that there was some presumption of law as to survivorship, and also to suggest that there was evidence to support a finding that the husband (a strong man of forty-two and a good swimmer) outlived the wife (a woman of forty in indifferent health who could not swim). The members of the House of Lords were unanimous that there was no presumption at all as to the order of deaths. They were also of the opinion that there was nothing on which the House could upset a finding of the court below that there was no evidence to show the order of deaths, with which in any case they agreed. It was also agreed that the onus is on a person claiming under an appointment or a devise or bequest to show that circumstances arose in which his title became effective to override that of the persons entitled in default of appointment or the heir or next-of-kin as the case might be. There was thus never any real prospect of the husband's estate getting the fund, as it was clearly impossible to show on these findings that he was alive after his wife. The real question was whether the gift to Wing took effect. As Lord Wensleydale observed, there could not be any doubt but that that was what the testatrix meant to happen in circumstances such as had occurred. Wing's difficulty, however, was that the gift to him was introduced by the words "in case my said husband should die in my lifetime," so that to qualify, he had either to show that the husband predeceased the wife (which on the findings was impossible) or that the introductory words really meant "if the gift to my husband fails." Two-thirds of the judgments, if not more, were concerned with the second point, on which the House held, Lord Campbell, L.C., dissenting, that the words in question were to be construed literally. Wing consequently could not make good his claim and the fund passed in default of appointment. Proceedings were also taken on the husband's will, and here also Wing failed for the same reasons, so that there was an intestacy.

Clearly these decisions worked a monstrous injustice which the Legislature very properly sought to cure by s. 184. I am not at all sure that it has done so. If all the circumstances had been the same except that s. 184 had been in force, the section would certainly have applied, since the finding of fact was that there was no evidence to show the order of deaths; the order was thus manifestly "uncertain." Hence the wife, as the younger person, would have been treated as survivor. That would have meant that the husband's whole estate passed to her. We do not know what she did with her residue. She may or may not have given it to Wing. But it is quite certain that Wing would not have taken the husband's estate under the husband's will, which, it is agreed on all hands, was certainly what the husband meant to happen. All that it would do would be to transfer the benefit of the husband's estate from the entirely unmeritorious class of persons entitled on the husband's intestacy to the equally unmeritorious class of persons entitled to the wife's residuary estate. As regards the wife's appointed fund, the position would be that Wing would have taken it, because the presumption that the wife outlived the husband would enable him to show that the words "in case my said husband shall die in my lifetime" did apply. Thus it is strictly accurate to say, as "Wolstenholme" does, that s. 184 removes the difficulties shown by *Wing* v. *Angrave*, the case on the wife's will. But the statement is distinctly misleading as it provides no solution at all for the difficulties of *Underwood* v. *Wing*, the case on the husband's will.

The other two cases mentioned by "Wolstenholme" were in probate matters. In *Re Alston* the husband and wife each left their estate to the other and each made the other his (or her) executor. Each will had a gift over in case the other spouse predeceased the testator, and in that event substituted executors were appointed. The husband and wife were on board a ship which sailed for Peru and disappeared without trace. In view of *Wing* v. *Angrave*, it was clear that neither set of substituted executors qualified for a grant as they could not show that the other spouse had indeed predeceased their testator. In consequence letters of administration with will annexed had to be granted in respect of such estate. As applied to *Re Alston*, s. 184 would have validated the will of one of the spouses but not those of both (we do not know which spouse was the elder), and it would have taken the estate of the elder spouse from that spouse's next-of-kin and given it to the next-of-kin of the younger spouse; surely that would not have been an improvement. *In the Goods of Beynon* concerned two intestates who were missionaries and were killed in the course of a Chinese massacre, in an unknown order. The effect seems to have been that neither got anything on the other's intestacy, which seems absolutely right and fair. Section 184 would again have meant that the estate of the younger spouse would have been enriched by that which would pass, on the intestacy of the elder spouse, to the younger spouse. I thus have difficulty in seeing that the claim in "Wolstenholme" is justified. There seem to have been no real difficulties to remove in the probate cases cited, but in those cases the section would have caused injustices to arise. In *Wing* v. *Angrave* and *Underwood* v. *Wing* there was injustice, which would only in part be removed.

It will be noted that none of those cases were of deaths proved to be simultaneous. In *Wing* v. *Angrave* various of the noble and learned lords did allude to such a possibility, but I doubt whether any of such allusions were part of the *ratio decidendi*. The concept of simultaneous deaths is one familiar enough in ordinary life (*cf.* "The aeroplane crashed and every one in it was killed instantaneously," and therefore by implication simultaneously), and there is no reason to suppose that because the lords alluded to the possibility they had given it any special attention. What was before them was a finding that there was no evidence as to the order of the deaths, not a case where it could plausibly be argued that there was some evidence of simultaneity. In discussing *Re Grosvenor* one must have in mind that it is the first case, in modern times at least, in which the concept of simultaneous deaths has been accepted, and that it has only been in one previous case, *Re Lindop* [1942] Ch. 377, that such an idea has been seriously debated.

I shall continue with this discussion next week; but I desire in conclusion to observe that the whole question of "commorientes" seems to be a very serious one indeed. *Re Grosvenor* and a recent probate case (as yet only reported in the newspapers) were both about deaths in 1940, which serves to emphasise that it may still be necessary to reopen estates of persons killed in like circumstances at any stage of the war. It would not be fair now to repeal s. 184, but it will also be worth considering whether it should not be repealed directly after the war is over, so as to give a fresh start. There are two quite separate points: (*a*) that s. 184 may not apply quite as often as is usually thought; (*b*) that it is a bad piece of legislation anyhow.

Landlord and Tenant Notebook.

Effect of Proviso on Meaning of "Last Quarter."

A SHORT but interesting point was decided in *Dickinson* v. *St. Aubyn* [1944] 1 K.B. 10. The plaintiffs had let a flat for seven years from Michaelmas, 1937, the lease containing (*a*) a proviso that if the lessee should desire to determine the term thereby granted at the end of the fifth year thereof and should give the lessors three months' previous notice of, etc., then immediately on the expiration of such fifth year that present demise should cease and be void, but without prejudice to the rights of either party in respect of any antecedent breach of covenant, and (*b*) a tenant's covenant to paint in the last quarter of the said term all the inside wood and iron work of the demised premises. The statement of facts places the two provisions in that order, and the judgment does not suggest that this was not the case.

The claim was brought for breach of the covenant cited against the grantee and his assignee, who had exercised the option. The latter pleaded that the covenant did not apply to the last quarter of her lease. The argument was (i) that as the habendum was for seven years, liability under the covenant did not arise unless the lease ran seven years, and (ii) that the proviso should not be construed so as to enlarge specifically defined and delimited liability under the covenant; the saving of rights in respect of antecedent breaches showed that the liability alleged could not arise as it could not have been an antecedent breach at the end of the fifth year. Hilbery, J., held that this argument (and I do not think anyone will quarrel with the use of the singular) was wrong, and preferred that advanced on behalf of the plaintiffs. This was that a proviso was one of the strongest ways in which an intention to create a condition could be expressed; the term became one of five years if the notice were given, and its last quarter became the last quarter of the fifth year.

Another way of putting this would be to say that the lease was for either seven or for five years, and "last quarter" must be construed accordingly. Up to a point, the problem is reminiscent of the small boy's suggestion that as it was so often the "last coach" of a train that suffered in a railway accident, the last coach should not be put on.

Once the "strength of the proviso" point is established, there can be little for a tenant in such a position to argue about. It might, however, have produced interesting results if some attempt had been made to exploit the following: the covenant obliged the tenant to paint, etc., in the last quarter of "the *said* term"; the covenant followed the habendum if not the proviso; *ergo*, the term was the term of seven years. In the report of the judgment, the first sentence concludes with the words: "decorative repairs which the lease provides are to be executed in the last quarter of the said 'term'." From the fact that the word "term" is put in inverted commas, one infers that no importance was attached to the presence of the words "the said."

Some support might have been found for the suggested line of argument in cases on the question whether given repairing covenants apply to buildings added during the currency of a lease. In *Cornish* v. *Cleife* (1865), 34 L.J. Ex. 19 qualifying effect was given to the words "the said." The repairing

covenant was a somewhat elaborate one, the tenant undertaking to repair, uphold, etc. " the said tenements and dwelling-houses, field or plot ground and premises, as well in houses, buildings, walls," etc., and this was held not to extend to new houses erected on the land not previously built upon. But Bramwell, B., observed that it was impossible to lay down general rules in these cases, each of which must depend on the particular covenant entered into between the parties ; and later authorities, notably *Field* v. *Curnick* [1926] 2 K.B. 374, have illustrated the impossibility adverted to.

If it were permissible to ignore the cogency with which provisos are invested by the rules of construction, and to go into the question of real intention, I doubt whether the tenant in *Dickinson* v. *St. Aubyn* would have fared any better. Her case would probably have been that the premises were due for redecoration in 1943, not 1941, and the landlord had not bargained for the extra benefit represented by earlier treatment. But the answer would have been that the idea was that when the lease terminated the landlord would be able to relet without having to reduce the rent or to spend money by reason of dilapidations, and this is generally considered to be the object of any repairing covenant. This is borne out by the fact that, in the case of a covenant to paint at intervals the courts have tended to frown upon attempts to claim after the term for literal failure to perform during the term. At all events *Harris* v. *Jones* (1832), 1 Moo. & R. 173, is authority for the proposition that provided the paintwork is in a satisfactory state at the yielding up, only nominal damages will be awarded for breaches to paint at specified times before.

Dickinson v. *St. Aubyn* reminds one, when one first reads it, of *Kirklinton* v. *Wood* [1917] 1 K.B. 332, in which the effect of the exercise of a power to determine upon a covenant to paint was likewise in issue ; but apart from these similarities the two cases have little in common. For in this case the lease, a twenty-one year one commencing on 1st March, 1904, contained (*a*) a proviso empowering *either* lessor or lessee's personal representatives to determine it on the lessee's death by a six months' notice expiring on 1st March in any year (rights and remedies saved) and (*b*) a tenant's covenant to paint " in the year 1909, and also *in the year* 1916, if this lease shall so long last." The grantee died in 1915 and his executors gave notice to determine on 1st March, 1916. They considered that they were under no liability to paint in that year, and did not do so ; after an arbitration the umpire stated a case, setting out the facts for the opinion of the court.

Lush, J., had to decide between the merits of an argument that the lease had lasted into 1916, and the covenant to paint in that year applied, and those of an argument that the lease meant that the tenant was to have the whole of 1916 in which to do the painting, and he had not had it. (This time the facts recall the short second conversation between Julius Caesar and the somewhat officious soothsayer, on the subject of 15th March). The learned judge considered that the landlord was right because there was an obligation on the executors, " as soon as the year 1916 commenced, to perform the covenant " (I think this means that as the lease still existed, the obligation had matured) *and* because the executors had, by giving the notice, shortened the period during which they could perform it. It seemed impossible for them, his lordship said, having taken that course, to say that they had the whole of the year. But it is important to note that the learned judge also observed that it was not necessary for him to consider what would have been the case if the lessor had given the notice ; so the *ratio decidendi* must be taken to be that the year 1916 had come.

To-day and Yesterday.

LEGAL CALENDAR.

March 27.—Edward Bellamy, having served his apprenticeship to a tailor, fell in with loose women, and became a pickpocket and petty thief, forcing shop windows at night or making off with some article from a silversmith's while confederates were pretending to bargain with him over something else. From this he graduated to forgery, soon becoming so bold that he dared to counterfeit the signature of the great Jonathan Wild, private detective and receiver of stolen goods. By means of a forged draft he obtained ten guineas from a Smithfield innkeeper from whom Wild was in the habit of borrowing money, but he soon realised the peril of antagonising so powerful and dangerous a man. His last exploit was a robbery in a shop in Monmouth Street. After a reward of £100 had been offered for his arrest, he was caught near Seven Dials. He was hanged at Tyburn on the 27th March, 1728, after making a speech confessing the justice of his sentence.

March 28.—On the 28th March, 1851, Sir John Romilly, second son of the great Sir Samuel Romilly, was appointed Master of the Rolls. He had been Attorney-General since the previous July. At that time the Master of the Rolls could still sit in the House of Commons, and he continued to represent Devonport there until he was defeated in the general election of 1852. He was raised to the peerage in 1865. As a judge he was painstaking and conscientious but his mind was somewhat deficient in breadth and grasp. He was prompt in his decisions, but apt to overlook the principles involved and the precedents by which the matter was governed. Outside the judicial sphere he was active in facilitating access to the public records.

March 29.—In his ever entertaining book of circuit reminiscences, Lord Justice MacKinnon tells of the South Wales Assizes following the great coal strike : " I doubt if there can ever have been two such Assizes as those at Swansea in the autumn of 1926 and at Cardiff in February, 1927." Mr. Justice Fraser and Mr. Justice Wright sat at Swansea till close on Christmas, and in the New Year the former returned there for nearly a month more. He himself with Mr. Justice Finlay arrived in Cardiff early in February : " We were confronted with a calendar of 305 prisoners, of whom about 270 were miners charged with riot during the great coal strike. My primary concern was with the civil list, which I finished in about ten days. I then helped with the prisoners until 5th March, when I went back to town. Mr. Justice Finlay got away from Cardiff on 29th March . . . There was a sad monotony about all these cases. Towards the end of the strike a few men began to break away, and return to work at the various collieries . . . Crowds assembled in the evening, as the man or men came back from work, stone-throwing began, and a fight between the police and the crown followed." All but a very few of the accused set up an alibi. The juries disbelieved most of the stories, and convicted."

March 30.—On the 30th March, 1838, at the Warwick Assizes, Messrs. Muntz, Pare, Trow and Pierce were tried for a riot and affray in St. Martin's Church, Birmingham, during a vestry meeting for the election of a churchwarden. There were two keen parties on the matter to be decided, and trouble arose when the rector, the Rev. Mr. Mosely, refused to put the question by a show of hands and also refused to allow an inspection of the parish books. The Radical Party then made an attempt to seize them while the rector covered them with his arm, and a scene of the utmost violence and disorder occurred. Mr. Pare made a rush for the rector's pew ; Mr. Muntz mounted on top of the partition of the pews, flourished his stick in a manner calculated to strike terror into his adversaries and encourage his friends ; in the violence of the charge, the gallery of the church seemed in danger of giving way ; finally the police were called in to restore peace. Muntz and Pare were found guilty of an affray only and Trow and Pierce were acquitted.

March 31.—On the 31st March, 1856, William Bousfield, who had murdered his wife and three children in Soho, was hanged at Newgate. After the drop had fallen he made an extraordinary muscular effort and raised his feet to the level of the platform. One of the officers pushed them off. Again he obtained a foothold and again he was forced into space. Yet a third time he got his feet up ; this time the executioner and his assistants held his body till he ceased to struggle. During this frightful tragedy the bells of all the neighbouring churches were ringing a merry peal in celebration of the peace just declared at the conclusion of the Crimean War.

April 1.—On the 1st April, 1669, Pepys recorded : " Up and with Colonel Middleton at the desire of Rear-Admiral Kempthorne the President, for our assisting them, to the court martial on board a yacht in the river here, to try the business of the purser's complaints, Barker against Trevanion, his commander, of *The Dartmouth*. But Lord ! to see what wretched doings there were among all the commanders to ruin the purser and defend the captain in all his rogueries, be it to the prejudice of the King or purser no good man could hear ! I confess I was pretty high, which the young gentlemen commanders did not like, and Middleton did the same. But could not bring it to any issue this day, sitting till two o'clock."

April 2.—At York Assizes on the 2nd April, 1834, Joseph Ratcliffe, overlooker in a Leeds hemp manufactory, was tried for the manslaughter of a boy named Samuel Tomlinson. He had often beaten him for various faults and one day he had tied one end of a rope round his neck, thrown the other over a steam-pipe eight feet from the ground, kept him hanging there for two or three minutes, till his face was black, and beaten him after he let him down. The next day the boy was unable to work, complaining of a pain in his neck ; he was taken to the Leeds Infirmary and died about eight months later. Ratcliffe was convicted and sentenced to twelve months' imprisonment.

Against Moustaches.

It is reported from the United States that a Brooklyn magistrate has started a campaign against moustaches on boys in their teens, and refuses to deal with delinquent youth cases until the offenders have been shaved. It recalls the solution adopted a few years ago by a French court when a beard lately grown by a confidence trickster was putting difficulties in the way of identification. The judge ordered its immediate removal, and when it was suggested that this was impracticable, he replied that there was a shaving outfit in his robing room and an usher announced that he was an expert barber. Barefaced after the operation, the prisoner was easily recognised. In late Victorian times Vice-Chancellor Bacon and Mr. Justice Day both evinced a strong dislike for moustaches at the bar. There is still living

a retired Chancery practitioner who remembers being thus addressed by the former: "If you will wear that nasty stuff in front of your mouth I can't hear you." Commissioner Kerr once put it even more bluntly to a bearded member of the Bar: "How can I hear you, sir, if you will cover up your muzzle like a terrier dog?" To which he got the retort: "Well, I'd rather be an English terrier than a Scotch cur." In an earlier day Mr. Justice Park designated moustaches "hairy appendages," and once disallowed the expenses of a witness wearing them. Lord Chief Justice Russell banned moustaches from the faces of leaders of the Bar and succeeded in enforcing his view. The chief sufferer was Mr. Witt, K.C., who, when his big, dragoon moustache was sacrificed was scarcely recognisable.

The Solicitors' Law Stationery Society, Limited.

ANNUAL REPORT.

THE fifty-fifth annual general meeting of the Society was held at 31, Breams Buildings, on Tuesday, 28th March, Sir Bernard E. H. Bircham, G.C.V.O., the Chairman of the Society, in the chair. After the secretary had read the notice convening the meeting and the auditors' report, the chairman said:—

In proposing the adoption of the report and accounts for 1943, I am very glad to be able to present a pleasanter picture than in the past three years. The improvement is due partly to an increase of business, particularly at our law-writing and typing branches and in our London works, and partly to a further reduction in expenses both at Head Office and at the branches. These reductions, following as they do on substantial reductions in both items in previous years, represent the cumulative result of economies we have effected since the outbreak of war, in spite of increased costs in many of the items included.

The Directors are very pleased that the hope I expressed last year as to a resumption of dividend has been realised and they recommend a dividend for the year at the rate of 5 per cent., less income tax. Bonuses to customers and staff will be payable in accordance with the present Article. The provision of £9,000 for future taxation is estimated to be sufficient to meet the liability for tax on the year's profits after making good a deficit of £500 on our estimate last year. The Directors propose that £3,500 should be written off the value of the freehold premises. We have been notified provisionally that we are to receive a value payment in respect of our Fetter Lane Works and while the figure is, of course, not yet known, the amount we receive, together with the value of what remains, may not restore the present book value.

The main responsibility for maintaining our various departments now falls on little more than half of our pre-war staff, and they are doing magnificent work, in many cases under very trying conditions.

Considering the large number of our employees serving in the Armed Forces, casualties among them have so far, I am pleased to say, been very light, but during the year two have lost their lives in action overseas and one in this country. In addition, six are prisoners of war. We feel sure that shareholders will share in sympathy with the relatives of those who have fallen and in wishing those in captivity a speedy return.

Turning now to the accounts, there are few figures which call for explanation. Our cash position is much more favourable. The small increase in stocks is due to larger amounts of purchase tax and work in progress. In the profit and loss account we have for the first time shown the trading profit, as we feel that this figure is of greater importance than the gross profit. The latter figure is, however, still shown. I have already referred to the reductions in Head Office and working expenses.

So far this year our returns show a further improvement and, apart from circumstances outside our control, I think we may expect this to continue. The belated increase in the scale of solicitors' costs which has now been authorised may well have some beneficial effect on our business.

In acknowledging most wholeheartedly the good work of the whole of our staff during the year, I should like to make special reference to the work of our fire guards. Those who are liable for this duty—and in many cases those who are not—have now for over three years played their part in guarding our premises and stock and I am glad to pay this tribute to their work.

I want to take the opportunity of thanking the General Manager on behalf of the Board for all the work he has done for the Society during the past year; he has worked admirably and his direction is admirable, and we are under a great debt to him for all his good work.

The report and accounts were unanimously adopted, the directors retiring by rotation, Mr. William Alan Gillett and Sir Harry Goring Pritchard, were re-elected, and the auditors, Messrs. Fuller, Wise, Fisher & Co., were reappointed.

The meeting closed with a vote of thanks to the Chairman and Directors, proposed by Mr. W. Bishop, who said he thought it was very wonderful, considering the great difficulties under which they had been working, that they should have achieved such a good result.

Notes of Cases.

CHANCERY DIVISION.

***In re* Borne; Bailey *v.* Bailey.**

Vaisey, J. 21st January, 1944.

Will—Construction—General bequest of Dominion Stock—Stock taken over by Treasury—Whether legacy fails.

Adjourned summons.

The testatrix by her will made in 1935 made a bequest to the defendant B of "£300 Union of South Africa Stock 1945–1975." By the joint effect of the Securities (Restrictions and Returns) (No. 3) Order, 1941, and the Acquisition of Securities (No. 5) Order, 1941, the transfer of this stock and certain other investments was prohibited except under permission of the Treasury and every person resident in the United Kingdom was ordered to transfer the stock into the names of certain officials of the Bank of England before the 1st December, 1941, at the price of £107 5s. 2d. for each £100 of stock. The testatrix died on the 2nd December, 1941, without having executed any transfer. Such transfer was in fact executed by her executors in April, 1942, who were then paid the purchase price. By this summons her executors asked what was the effect of the bequest.

VAISEY, J., said that the legacy must be treated as a general and not as a specific legacy. There was therefore no question of ademption properly so called. The fact that the testatrix, owing to illness, had at the time of her death made no transfer of the stock could not affect the position. Normally, the effect of a general legacy of a sum of a particular stock amounted to a direction to the executors to buy such stock for the legatee or to pay to them the value thereof: *In re Gray* (1887), 36 Ch. D. 205, at 211. It was suggested that, having regard to the prohibition against dealing with the stock and to the impossibility of purchasing it, the gift failed for uncertainty, because there was no method of ascertaining the true value. It seemed to him that the legatee was entitled to the sum which the stock would have been worth to any holder of it. There was no doubt but that the Treasury were at all material times willing to take it over at the fixed price. The stock had not been cancelled. He would declare that the legatee was entitled to be paid the sum of £321 15s. 6d.

COUNSEL: *Hillaby; Michael Albery; A. Mulligan; C. V. Rawlence.*

SOLICITORS: *Godfrey & Robertson*, for *Robertson & Thomas*, Amersham; *Haslewood, Hare & Co.*, for *Francis & How*, Chesham.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

Supreme Court.

EASTER VACATION, 1944.

Notice is hereby given that Rules of Court (R.S.C. (No. 1) 1944) have been made requiring the following Offices of the Supreme Court to be open for business on Good Friday, Easter Eve and Tuesday in Easter Week, 1944:—

(1) The Principal Probate Registry at Llandudno;
(2) The District Probate Registries;
(3) The Personal Application Department, Somerset House.

The Offices of the Supreme Court in London (other than the Personal Application Department) will be closed as usual in accordance with R.S.C., Ord. LXIII, Rule 6.

Court Papers.

COURT OF APPEAL AND HIGH COURT OF JUSTICE—CHANCERY DIVISION.

HILARY SITTINGS, 1944

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA.	APPEAL COURT I.	Mr. Justice SIMONDS.
Monday, Apl. 3	Mr. Blaker	Mr. Hay	Mr. Farr
Tuesday, „ 4	Andrews	Farr	Blaker
Wednesday, „ 5	Jones	Blaker	Andrews
Thursday, „ 6	Reader	Andrews	Jones

DATE.	GROUP A. Mr. Justice COHEN *Witness*	Mr. Justice VAISEY *Non-Witness*	GROUP B. Mr. Justice MORTON *Non-Witness*	Mr. Justice UTHWATT *Witness*
Monday, Apl. 3	Mr. Jones	Mr. Reader	Mr. Andrews	Mr. Blaker
Tuesday, „ 4	Reader	Hay	Jones	Andrews
Wednesday, „ 5	Hay	Farr	Reader	Jones
Thursday, „ 6	Farr	Blaker	Hay	Reader

Honours and Appointments.

It is officially announced that the King has approved the appointment of the Honourable TEJH SINGH to be a Judge of the Lahore High Court, in the vacancy that will occur on the retirement of Mr. Justice Monroe.

The King has approved a recommendation of the Home Secretary that Mr. NORMAN HARPER be appointed Recorder of Richmond, Yorkshire, in succession to Mr. H. B. H. Hylton-Foster, who has been appointed Recorder of Huddersfield. Mr. Harper was called by the Inner Temple in 1927, and Mr. Hylton-Foster in 1928.